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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

11 Hordels  
Proc I

FILE: B-190890

DATE: April 3, 1978

MATTER OF: Concept Merchandising, Inc.

DIGEST:

Protest is not for consideration on merits by GAO when initial protest to agency is determined to be untimely pursuant to 4 C.F.R. § 20.2(b)(2), since basis of protest was known or should have been known more than 10 days prior to filing of initial protest.

Concept Merchandising, Inc. (Concept), has protested any award pursuant to invitation for bids (IFB) No. FEHP-C4-71922-A-7-14-77, for carpeting items 274-7 and 274-8, issued by the National Furniture Center, Federal Supply Service, on June 10, 1977. Bid opening was scheduled for July 28, 1977.

Concept's protest, filed with our Office on February 7, 1978, questions the propriety of the use of a competitive solicitation by the procuring agency, since Concept submits that there is only one company, Camac Corporation (Camac), that manufactures the carpeting called for under the above-mentioned items. Additionally, Concept states that after bid opening it " \* \* \* sought to obtain the yarn in question from Camac and it was at this time that \* \* \* [Concept] first learned that Camac would only sell to [Concept's] competitor, Commercial Carpet Company." Accordingly, it is Concept's position that use of an IFB was an attempt by the procuring agency "to procure a sole-source item through the guise of a competitive procurement," contrary to procurement regulations.

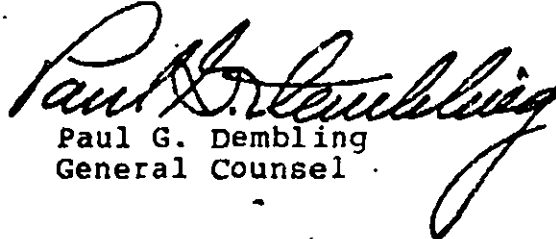
We have been advised that on September 19 and 27, 1977, the procuring agency conducted plant facility inspections during which it was learned that Concept was unable to supply the agency with a letter of commitment concerning the carpeting items. This inability was confirmed by Concept in an October 13, 1977, letter to the agency. Consequently,

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it was determined that Concept was not responsible and this determination, on October 18, was sent to the Small Business Administration (SBA) for a certificate of competency (COC). On December 12, 1977, Concept, after learning that SBA had refused to issue a COC for these items, protested to the agency alleging that under the circumstances of this situation the use of the IFB was improper. This protest was denied by the agency in a letter received by Concept on January 24, 1978.

While it is true that our Bid Protest Procedures (Procedures) urge protesters to initially seek resolution of their complaints with the procuring agency, there is a requirement that the initial protest must have been filed with the agency in a timely manner if our Office is to consider it. See 4 C.F.R. § 20.2(a) (1977). Section 20.2(b)(2) (1977), of our Procedures, provides that protests "shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." It is clear from the record that Concept was aware of the basis of its protest, i.e., agency's alleged failure to procure the above items pursuant to a sole-source procurement, more than 10 days before its protest was filed with the agency.

Accordingly, Concept's protest with the agency was untimely filed and, therefore, will not be considered on the merits by our Office.

  
Paul G. Dembling  
General Counsel